

(Judgment reserved)
IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL.

Appeal from Order No. 122 of 2001

Old No.

First Appeal No. 1200 of 1993

State of U.P. through
Superintending Engineer,
Irrigation Construction Circle,
Dehradun.

.....Appellant

V e r s u s

M/s Jai Prakash Associates,
C/o Sri Prem Prakash (Attorney) Ashirvad,
Rajendra Nagar,
Dehradun.

.....Respondents

Smt Beena Pandey, learned counsel for the appellant.
Sri S.K. Jain, learned counsel for respondent.

Coram:

Hon'ble M.M. Ghildiyal, J.

Hon'ble B.C. Kandpal, J.

(Per Hon'ble M.M. Ghildiyal, J).

Heard learned standing counsel for State of U.P. on behalf of appellant and Sri S. K. Jain learned counsel for the respondent.

This is an appeal under section 39 of the Arbitration Act, 1940 against the judgment and order dated 25.08.1993 passed by Civil Judge, Dehradun in Misc. Case No. 91 of 1993 in Original Suit No. 57 of 1993 rejecting the application of the appellant under section 30/ 33 of the Arbitration Act, 1940 for setting aside the award given by the Arbitrator and making the award rule of the court.

The fact of the case are that an agreement No. 2/S.E./86-87 dated 22.02.1987 was executed between the Superintending

Engineer, Irrigation, Construction Circle, Dehradun on behalf of Governor of U.P. on the one hand and M/s Jai Prakash Associates on the other hand. The agreement was executed for RCC and Tiles lining works from km 8.00 to 9.80 of power channels of Khara Hydro Electric Project. The date of start of work was 27.02.1987 and the due date of completion of the work was 26.08.1988, which was later on extended by the Department till 26.07.1989. After the final bill was prepared dispute had arisen and as per agreement department appointed one Sri Thakur Dass, retired Chief Engineer, as an Arbitrator. Respondent filed Claim Petition claiming Rs. 11,35,278/- for various heads. State of U.P. through its Superintending Engineer, Irrigation Department, Construction Circle, Dehradun filed written statement on behalf of State of U.P. denying the claim. After filing affidavits, documents, evidences led by the parties the arbitrator gave an award on 10.01.1993 amounting to Rs. 9,87,000/- for the five claims made by the respondents and also allowed interest at the rate of 16% from the different dates in respect of different claims.

Respondent submitted an application in the court of Civil Judge, Dehradun for making the award rule of the court. The State of U.P. filed an objection to the award under Section 30/33 of the Arbitration Act in Misc. Case No. 91/93. Learned Civil Judge, Dehradun by judgment and order dated 25.08.1993 rejecting the application filed by State of U.P. under Section 30 / 33 of the Arbitration Act 1940 made the award rule of the court. This order dated 25.08.1993 is under challenge in the present appeal.

Learned counsel for the appellant has assailed the award as well as the order dated 25.8.93 passed by Civil Judge on the grounds: first, that the rate of interest awarded by the Arbitrator is excessive; second, that the Arbitrator has travelled

beyond the contract; as such the award passed by the Arbitrator and judgment of learned Civil Judge, rejecting the objection is liable to be set aside.

It is well settled law that the court's power to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act, 1940. Section 30 Arbitration Act 1940 provides that an award shall not be set aside except on one or more of the following grounds, namely,

- (a) That the Arbitrator or Umpire has misconduct himself for proceedings;*
- (b) That an award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have become invalid under section 35;*
- (c) That an award has been improperly procured or is otherwise invalid.*

Learned counsel for the appellant has submitted that the award is being challenged on the ground of misconduct as the arbitrator has misconstrued Clause 1.01.09 of the Contract. Relevant extract of para 1.01.09 is reproduced herein below.

"No claim shall be entertained for damages to work or materials or the loss suffered by the Contractor owing to floods, rains or any other reasons occurring prior to final measurement and taking over the work or part thereof by Engineer Incharge."

The submission of the learned counsel for the appellant is that in spite of this condition in the contract the Arbitrator has allowed the claim for additional earth work done by the Contractor. Under this head the respondent has claimed Rs.

42,000/- on account of additional excavation of 12,000/- Cu. Mt.
at an agreement rate of Rs. 35/- per Cu. Mt.

Learned counsel for the respondent has submitted that the claim was rightly allowed by the Arbitrator as claim has been arisen out of the fact that the department has constructed a catch water drain at the top of the slope at the outer edge of the service road where channel was in cutting and was also being maintained by the department. On account of space restriction and construction activities going on concurrently drain was incomplete and inadequate. Rock falls due to freshly cut and disturbed rock slopes blocked the drains. This prevented the department from proper maintenance of drains, with the result that the drain over flowed into power channel bringing debris, silt, slush along with water. This material accumulated in the channel and had to be removed by the claimants. It was admitted by the department that the drain was constructed and maintained by the Department. The quantity excavated by the claimant was not disputed by the respondent. The only submission before the Arbitrator by the department was that in view of the provision of Clause 1.01.09 the contractor was not entitle to get payment for removal of debris brought by rain water. We have perused the finding recorded by the Arbitrator as well as learned Civil Judge and we do not find any force in the argument advanced by the learned standing counsel for State of U.P.

Learned counsel for the respondent has submitted that the court cannot substitute its own evaluation of the conclusion of law or facts to come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties. We find force in the submission made learned counsel for the respondent.

Learned counsel for the respondent has placed reliance on the judgment of Hon'ble Apex Court in case of B.V. Radha Krishna Vs. Sponge Iron India Ltd. reported in AIR 1997 SC page 1324 wherein the Apex Court has held as under:

“The Arbitrator is the final arbiter for the disputes between the parties and it is not open to challenge the award on the ground that the Arbitrators has drawn his own conclusion or has failed to appreciate the facts. Ins Sudarsan Trading Co. Vs. Government of Kerala (AIR 1989 SC 890), it has been held be this court that there is a distinction between disputes as to the jurisdiction of the Arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the Arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction, Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties. (Emphasis supplied). Whether a particular amount was liable to be paid is a decision within the competency of the Arbitrator. By purporting to construe the contract the Court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the Arbitrator on certain amounts awarded is a possible though perhaps not the only correct view, the award cannot be examined by the Court. Where the reasons have been given by the Arbitrator in making the award the Court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The Arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a Judge on the evidence before the Arbitrator.”

So far the other ground that the rate of interest awarded is excessive is concerned learned counsel for respondent has

placed reliance on Apex Court's Judgment in case of State of U.P. Vs. Harish Chandra and Company reported in 1998 (2) ARBLR page 716 wherein the Apex Court has upheld the judgment passed by court below awarding 15.50 per cent interest and held that it was within realm of the discretionary jurisdiction of the Trial Court and it could not be set aside by the High Court in appeal.

For the reasons recorded above, the appeal is devoid of merit as such, is dismissed. No order as to costs.

(B.C. Kandpal, J)

(M.M. Ghildiyal, J)

February 22, 2006

SKSharma